IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

Crl.MC.No. 874 of 2007()

AGAINST THEORDER IN CRRP.866/2002 Dated 20/12/2006 of this Court.

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PETITIONER: REVISION PETITIONER

ABDUL RAZAK P., S/O.KUNHALAN,
PATTIKKADAN HOUSE, PULLANKODE,
MALAPPURAM DISTRICT.

BY ADV. SRI.BABU S. NAIR

RESPONDENTS: RESPONDENTS

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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, KOCHI-31.

2. VIJAYARAJAN C., S/O.KANARAN,
PANNIKOODAN HOUSE,
KUNDUPARAMBA, MALAPPURAM DISTRICT.

R2 BY ADV. SRI.ABRAHAM SAMSON
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.874 of 2007

Dated this the 23rd day of March, 2007

ORDER

The petitioner has been found guilty, convicted and sentenced in a prosecution under Section 138 of the N.I Act. This Court in revision had modified the sentence. The petitioner now faces the sentence of imprisonment till rising of court. There is a further direction "to pay" an amount of Rs.90,000/- by way of compensation to the complainant. The default sentence is also prescribed. There is a further direction that the petitioner shall surrender before the learned Magistrate positively within two months from 20.12.2006 and shall "deposit" the entire amount of compensation before court positively on that date. Default sentence is also prescribed. For the sake of clarity, I extract the relevant operative portion in para.3 of the order passed in revision below:

> "3. In the result, I confirm the conviction of the petitioner for offence under Section 138 of N.I Act but modify and reduce the sentence of imprisonment to imprisonment for one day till rising of court and direct the petitioner to pay an amount of Rs.90,000/- by way of compensation to the 2nd respondent/complainant under Section 357(3) Cr.P.C and in default to undergo simple imprisonment for three months. The petitioner shall surrender before the Judicial First Class Magistrate, Malappuram positively within two months from today to serve the sentence and shall at the same time deposit the entire amount of compensation before the court positively on that day. In case of failure to make deposit of compensation on that day, the learned Magistrate shall

enforce the sentence in default of payment of compensation forthwith.

This Criminal revision is disposed of as above."

2. The petitioner/accused and the respondent/complainant have now come before this Court with this petition under Section 482 Cr.P.C. Both of them submit that the amount of compensation has already been paid and received by the complainant. The petitioner had not appeared before the learned Magistrate within a period of two months as directed. The petitioner is willing to appear before the learned Magistrate to suffer the substantive sentence of imprisonment, but he apprehends that in view of the later statement that the amount must be "deposited" positively within two months, the default sentence may be enforced notwithstanding the admitted fact that the payment has been made to the complainant.

3. I do note that there is some confusion. In the earlier portion of para.3 extracted above, the direction is to pay the amount and later it has been directed that it shall be deposited. The petitioner contends that it has been paid thinking that that would be sufficient compliance.

4. I am satisfied, in these circumstances, that it can be clarified that if the learned Magistrate is satisfied that payment of Rs.90,000/- has been effected by the petitioner/accused to the respondent/complainant, the default sentence should not be enforced.

Insistence need not be made on literal compliance of the direction to deposit the amount in para.3 of the order in revision extracted above.

5. This Crl.M.C is, in these circumstances, allowed in part. The above clarification is made. The petitioner along with the complainant can now appear before the learned Magistrate immediately and the petitioner can suffer the substantive sentence of imprisonment.

6. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-